IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.655 OF 2004

Municipal Corporation of Gr.Mumbai. ..Appellant

Versus

Shri Rajnath Sitalaprasad Mishra & Anr... Respondents

Shri M.D.Patil for BMC Appellant

Mr.S.K.Chaurasia i/b A.M.Saraogi for respondent No.1

CORAM : P.V.KAKADE, J.

DATE : 6th OCTOBER, 2004

P.C.:

1. Heard the ld. counsel for the parties. Perused the record.

2. Rule. Rule made returnable forthwith.

3. This is an appeal preferred by the appellant Municipal Corporation against the order dated 13.2.2001 whereby the suit came to be decreed against the

appellant by virtue of provision of Order VIII Rule 10 of C.P.C.

4. At the outset it may be noted that the impugned order reads thus :

> Mrs.Joglekar states that she has not received any communication from the concerned officer nor written statement of the defendants is ready. Mrs.Joglekar applies for further time to file written statement. Her application is rejected as time to file written statement granted to the defendants since the year 1993. Mr. Tripathi presses for decree under Order 8 Rule 10 of the Civil Procedure Code for want of written statement. Hence the suit decreed in terms of prayers (a) and (b) under Order VIII Rule 10 of C.P.C.

Perused the impugned order which shows that the suit was of the year 1990 and it was obligatory upon the defendants to file written statement initially in the

year 1993. However time and again the date was asked for and granted to file written statement and finally the matter came up before the Lower Court on 13.2.2001 for filing written statement. However, advocate for the appellant corporation pleaded inability to file written statement as the concerned officer of the Municipal Corporation did not communicate her, which facts culminated finally in passing the impugned order.

4. Order 8 Rule 10 stipulates that where any party from whom the written statement is required under Rule 1 or Rule 9 of the said Order fails to present the same within the time permitted or fixed by the Court, as the case may be, the court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment the decree shall be drawn up. In normal course I would have considered to take recourse to later rider allowing the party to file written statement by remanding the matter. However, this is a completely gross case where no leniency deserves to be shown to the appellant. At this stage it may be noted that even the impugned order was appealed against by delay of more than two years, but finally the delay was condoned and

therefore, the appeal was come up for admission. Moreover, the fact that no written statement was filed during the period of eight years is not at all explained on behalf of the appellant in any manner whatsoever. There was answer to the query of this Court that written statement is not ready today. In these circumstances the appellant does not deserve any indulgence from this court and as such the appeal stands dismissed in limine with no order as to costs.